ATTACHMENT 1

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Board of Animal Services Commissioners
City of Los Angeles
419 South Spring Street, 14th Floor
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Honorable Members:

Your letter dated August 22, 2002, asks for our opinion concerning the following: what will be "the legal implications and liability issues to the City of Los Angeles of amending the LAMC and/or any other City or Departmental documents" by replacing the name "animal owner" with "animal guardian" in interdepartmental and intradepartmental correspondence, as well as by asking the City Council to amend the Los Angeles Municipal Code to codify this change.

This Office believes that current law does not prohibit the proposed change. However, we believe that such a change is likely to create confusion among animal owners, veterinarians, other animal service providers, and the City's regulatory agencies regarding their rights and responsibilities vis-a-vis animals, and it may also lead to litigation against the City. The reasons which support our conclusion are presented below.

Although we could not find any law prohibiting the proposed change, we have nonetheless concluded that current state law defines "owners" and "guardians" in a manner which may render these two entities' rights and responsibilities legally incompatible. Due to this incompatibility, we believe that the proposed name change may create confusion among animal owners, regulatory agencies, and service providers regarding their respective rights and duties vis-a-vis domestic, and even wild animals. It may also subject these entities to unwarranted pressure and even frivolous litigation arising from the performance of their normal duties and/or activities. For these reasons, we recommend against the proposed name change.

State law extensively regulates animals in California. For example, it classifies domestic animals as personal property. Civil Code §§654, 655 & 663. Wild animals may also become personal property under certain conditions. Civil Code §656. All animals have either a public or a private owner. California Civil Code §669. Animal ownership may be absolute or qualified. California Civil Code §678. Any person may dispose of personal property in California. Civil Code §671. Due to the legal status of property in this state, owners may enjoy the rights, privileges, and power over their property, subject only to the restrictions placed upon them by existing law. Placerville Fruit Growers' Association v. Irving. (1955) 135 C.A.2d 731, 736.

Under state and local laws, animal owners may legally sell, transfer, encumber, or alter their animals if they so choose. They may not abuse or neglect them. Penal Code §597 et seq. These owners are also subject to various health, safety and police powers of the government, which may require them to license their animals, inoculate them against rabies, prevent them from running loose, and control the noise which they make and their aggressive tendencies, etc. State law allows municipalities to adopt their own animal control laws, as long as they do not conflict with applicable state statutes. The City of Los Angeles' Municipal Code contains a comprehensive set of laws aimed at controlling the animal population within its boundaries. See Los Angeles Municipal Code § 53.00 et seq. Federal law also regulates certain types of animals, and supersedes both state and local laws in matters concerning specific animals. See, for example, the Wild Bird Conservation Act (16 USCS §§ 4901 et seq.), the Endangered Species Act of 1973 (16 USCS § 1531), or the Marine Mammal Health and Stranding Response Act (16 USCS §§ 1421 et seq.).

"Guardian" is a legal term which defines a person lawfully invested with the power, and charged with the duty, of caring for another person and managing the property and rights of that other person who, due to age, mental or physical ability, or lack of self-control, is considered incapable of administering his or her own affairs. See Black's Law Dictionary, 6th Edition. A guardian has a fiduciary relationship with his or her ward, and must act in the ward's best interest at all times. See Doran v. Hibernia Savings and Loan Society, (1947) 80 C.A.2d 790; In the Matter of the Estate & Guardianship of Wood (1961) 193 C.A.2d 260.

The law recognizes several types of guardians, classified according to the manner of their appointments and the subject of their guardianship. There are *testamentary guardians*, whose wards are children who lose their parents (Probate Code §1003 et seq.); *general guardians*, who are charged with the general care and control of their wards' person and property (See Civil Code §40); and *guardians at litem*, who are appointed by courts to protect the interests of people deemed incapable of protecting their own interests in particular litigation matters (See Code of Civil Procedure §373.5). There are also *guardians by nature* (sometimes called *natural guardians*), who are a child's father and mother, as well as *guardians by estoppel*, who are people who assume the role of a guardian without specific legal authority. See Black's Law Dictionary, 6th Edition.

Existing state law recognizes many differences between an "owner" and a legal "guardian." For example, unlike an owner, a guardian has limited possession of his or her ward's property and is prohibited by law from handling it in a manner inconsistent with the ward's best interest. An owner, however, may generally handle his or her property in any manner he or she chooses, subject only to well defined legal prohibitions. With regard to animals, the law protects their interests only in case of abuse.

Guardians may be removed if they: fail to use ordinary care and diligence; fail to perform their duties or demonstrate a lack of capacity to perform them in a suitable manner; are convicted of a felony; or have a certain type of conflict of interest with their ward's interest. See Probate Code §2650. Owners, on the other hand, continue to own the animal even if they are convicted of a felony or have a conflict of interest, for example.

Because these terms have distinct legal definitions, we believe that the proposed replacement of the term pet "owner" with that of "guardian" could easily create confusion as to which legal standard applies to the new owner or guardian, and could encourage frivolous claims. It is foreseeable that some persons would draw upon those definitions and legal standards which most favor their causes to argue their heretofore unsupported points of view. For example, an advocate for animals could use this name change to argue that the animal's best interest should be considered before the animal is subjected to any invasive procedure, such as sterilization or euthanasia. Without a corresponding change in the law governing owners and guardians, such arguments would carry no legal authority, but would still confuse the issue.

The proposed name change, however, would not carry any legal authority, because neither City regulations nor ordinances may change existing state or federal law. *A local municipal ordinance is invalid if it attempts to impose additional requirements in a field that is preempted by the general law.* In Re Lane (1962) 58 Cal.2d 99, 102. This well-established legal principle would invalidate from inception any attempt to impose a new legal relationship between pets and their owners, either via an ordinance, or through internal regulations adopted by the City's Department of Animal Services. Because state law classifies domestic animals as their owners' personal property, any attempt to pass an ordinance altering this legal concept would result in a preemption lawsuit against the City.

Although the City may adopt an *advisory* policy indicating its preference to have animal owners referred to as animal guardians, we believe that such policy, whether adopted by ordinance or departmental regulation will likely create confusion regarding the animals' legal status and their owners' obligations toward them.

For example, because a "guardian" must act in his/her ward's best interest at all times, we can foresee arguments that animals must or must not be: spayed/neutered; confined to any particular location; muzzled, bred, overfed or underfed; sold, euthanized, adopted or not adopted to particular new "guardians" who may or may not provide a suitable living environment; undergo various medical procedures; or even be given legal rights currently available only to humans and human organizations, such as the right to sue or be sued. Although some of these arguments may seem far fetched, each one of them can find legal support in the current state law's definition of a "guardian." Although we cannot predict whether anyone will actually raise such legal arguments, the mere fact that someone may bring them may discourage pet ownership among those people who are unwilling to be entangled in any legal controversy.

The proposed name change may also have the unintended consequence of reducing the City's ability to properly regulate its animal population. If the animal owner is seen as only a guardian, then, arguably, his or her animal is his or her ward. As such, an argument can be made that the "ward" requires its own legal representative in any proceedings against it, such as during the City's administrative hearings for barking and/or dangerous dogs. See Los Angeles Municipal Code §§ 53.18.5, 53.33, 53.63. Thus, although not justified under state law, the City may be pressured into creating some sort of Pet Advocate's Office to represent pets in any proceedings against them. The same argument may be raised when the City has to euthanize animals, spay/neuter them without a

human's consent (the current City practice with stray dogs and cats adopted out of its shelters), or imposes any other type of regulation on domestic animals. Again, although seemingly far fetched, such arguments could be made based on the current state law's definition of a "guardian."

Yet another area which may be impacted by this name change is veterinary care and volunteer work. Currently, a veterinarian may perform medical procedures on an animal with consent from its owner or, if it is a stray, with consent from the Department of Animal Services' employee who brings the animal in for treatment. Because frivolous lawsuits may be filed against the veterinarian for failure to obtain the "guardian's" consent, a veterinary doctor may be unwilling to risk treating a stray animal. Also, a person who now volunteers to work with animals in a public or private setting may become unwilling to do so if not adequately covered by liability insurance, just in case he or she is sued for mistreating a "guardian's" ward. In the current legal environment, which encourages lawsuits, such concerns would be justified, even if such lawsuit would have no merit.

In conclusion, this Office believes that the proposed name change would not have any legal authority and may have the unintended consequences of decreasing pet ownership, hampering the City's attempts to control its animal population, and reducing volunteer activity and medical care for domestic animals. Although we could not find any legal prohibition against such change, we believe that it would create confusion and likely subject animal owners, service providers, volunteers and the City to unnecessary, frivolous legal claims. For these reasons we recommend against changing the name "animal owner" to "animal guardian" in Department of Animal Services' interdepartmental or intradepartmental documents and by amending the Los Angeles Municipal Code.

If you have any further questions, please contact Valentin Dinu at (213) 485-3645.

Very truly yours,

TERREE BOWERS
Chief Deputy City Attorney

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